

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JUL 14 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Interconnection and Resale Obligations
Pertaining to Commercial
Mobile Radio Services

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CC Docket No. 94-54

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REPLY COMMENTS OF CABLE & WIRELESS, INC.

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July 14, 1995

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SUMMARY OF POSITION

If Commercial Mobile Radio Services ("CMRS") are to achieve their full potential as critical components of the National Information Infrastructure, the Commission should adopt its proposed liberal resale policy. The parties opposed to resale have not advanced any sound reasons why the CMRS market should be insulated from competition by resellers. As the Commission has recognized for nearly twenty years, resale serves the public interest in many ways. Resale places downward pressure on rates and deters unlawful price discrimination. In order to ensure that its resale policy is not frustrated, the Commission should prohibit facilities-based CMRS providers from engaging in any unjust, unreasonable, or discriminatory practices that would render resale economically impractical.

To further promote competition, facilities-based CMRS providers should be required to permit the resale of their services by switch-based resellers and by competing facilities-based carriers, and to make their roaming arrangements available to resellers. In addition, the Commission should require CMRS number portability and promote interconnection among CMRS networks at the earliest possible date. Such policies will help maximize the number of efficient operators in the CMRS market and will discourage anticompetitive conduct.

Several facilities-based CMRS providers oppose resale, interconnection, and related requirements on the grounds that market forces are sufficient to safeguard competition. They also raise certain technological concerns. Although the creation of a ubiquitous "network of networks" requires technological acumen and perhaps some network advances, the Commission should be wary of arguments advanced by entrenched facilities-based carriers which would effectively limit the number of competitors in the CMRS market.

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REPLY COMMENTS OF CABLE & WIRELESS, INC.

Cable & Wireless, Inc. ("CWI") hereby replies to the comments that were filed in response to the Commission's Second Notice of Proposed Rulemaking ("Second Notice") in the above-captioned proceeding on June 14, 1995.¹ CWI is a domestic common carrier authorized by the Commission to provide private line and message toll telecommunications services throughout the United States and abroad. CWI is contemplating the resale of Commercial Mobile Radio Services ("CMRS") to augment its current service offerings.

As set forth more fully below, the Commission should reject the arguments advanced by facilities-based providers of CMRS in opposition to the resale policy proposed by the Second Notice. These parties have failed to advance any sound reasons why CMRS should be insulated from the additional competition that unlimited resale will make possible. Indeed, as advocated by CMRS resellers, the Commission should reaffirm its liberal resale policy,

¹ See Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, Second Notice of Proposed Rulemaking, CC Docket No. 94-54, FCC 95-149 (released Apr. 20, 1995) [hereinafter "Second Notice"].

expand roaming requirements, and take steps to ensure that direct interconnection among CMRS networks proceeds apace. The competition which these policies will engender is essential if CMRS is to reach its potential as a critical component of the National Information Infrastructure.

I. INTRODUCTION

In the Second Notice, the Commission has solicited comment on whether it should: impose a resale obligation on all CMRS providers; permit facilities-based providers to deny resale to competing facilities-based carriers; allow resellers to interconnect their own switches to CMRS networks; require number portability as part of its resale policy; impose requirements to foster roaming among CMRS networks; and mandate interconnection among CMRS networks.

The comments reveal a dichotomy of views separating facilities-based CMRS providers and resellers. By and large, the facilities-based providers have asked the Commission to adopt policies which would impede entry by resellers and which would limit the types of services that resellers can offer. Some facilities-based providers, for example, have argued that CMRS technology and networks are insufficiently developed to justify switch-based resale and number portability. Both switched-based resale and number portability, however, are critical to a reseller's ability to offer advanced network services on a par with -- or in a more sophisticated fashion than -- facilities-based providers.

Resellers, for their part, have noted the significant pro-competitive benefits that the Commission's resale policies have produced in the market for landline telecommunications services, and have urged the Commission to bring those same policies to bear in the CMRS

market. Resellers also have cautioned the Commission to be wary of arguments by facilities-based carriers which would limit the number of viable competitors in the CMRS market.

CWI shares the resellers' goals, as well as their concerns about the consequences of the facilities-based carriers' arguments. As the Commission is aware, virtually all of the auction winners for Personal Communications Service ("PCS") blocks "A" and "B" are affiliated with carriers which already provide cellular and/or other local communications service. Incumbent CMRS providers will also undoubtedly play a significant role in the development of systems operating in the other PCS blocks, and Nextel is establishing itself as the dominant provider of wide-area Specialized Mobile Radio ("SMR") service. Given this foreseeable consolidation of the facilities-based CMRS market, it is imperative that the Commission's policies promote a vibrant resale market.

To this end, CWI urges the Commission: to require the resale of CMRS capacity on reasonable terms and conditions; to require resale both to switch-based resellers and to competing facilities-based carriers; to require number portability; to mandate that roaming arrangements be made available to resellers; and to monitor closely the development of CMRS networks so that interconnection among them can be achieved as soon as possible.

II. THE COMMISSION SHOULD REQUIRE ALL CMRS PROVIDERS TO PERMIT THE RESALE OF THEIR SERVICES ON REASONABLE TERMS AND CONDITIONS.

The Second Notice tentatively concludes that a general resale requirement is necessary "because it will serve as an effective means of promoting competition in the CMRS marketplace."² A handful of facilities-based providers, however, has suggested that a formal resale requirement is unnecessary, and that competition will create a sufficient incentive for them to permit the resale of their services.³

These suggestions fly in the face of the Commission's resale policy. For nearly twenty years, the Commission has recognized that a resale requirement, in and of itself, serves the public interest by putting downward pressure on the rates of facilities-based carriers.⁴ A resale requirement also discourages unreasonable price discrimination among similarly situated customers. Resellers deter price discrimination by making the underlying facilities-based carriers' bulk-discount, or "wholesale," rates more widely available than they would otherwise be. The argument that a resale requirement is unnecessary, if adopted, also could open the door for facilities-based carriers to restrict resale, conduct which the Commission has long held to

² Id., ¶ 86.

³ See, e.g., Comments of AirTouch Communications, Inc., CC Docket No. 94-54, at 16 (filed June 14, 1995) [hereinafter "AirTouch Comments"]; Comments of Nextel Communications, Inc., CC Docket No. 94-54, at 8-9 (filed June 14, 1995).

⁴ See Resale and Shared Use of Common Carrier Services and Facilities, 60 F.C.C.2d 261, 265 (1976), on reconsideration, 62 F.C.C.2d 588 (1977), aff'd sub nom. AT&T v. FCC, 572 F.2d 17 (2d Cir.), cert. denied, 439 U.S. 875 (1978) [hereinafter "Resale and Shared Use"]; Regulation of International Accounting Rates, 7 FCC Rcd 559, 559 (1991).

violate Sections 201 and 202 of the Communications Act.⁵ Given this precedent, it would be arbitrary and capricious if the Commission were not to impose a resale requirement on CMRS providers.

To further promote competition and prevent unjust discrimination in the CMRS market, the Commission should reaffirm the breadth of its resale policy. Over the past several years, the Commission has been told that some facilities-based cellular carriers have made resale economically infeasible by refusing to make their services available on reasonable and nondiscriminatory terms and conditions. Among other things, parties have argued that facilities-based carriers: refuse to provide resellers with the same discounted or wholesale rates that are made available to the carriers' other customers;⁶ impose minimum usage requirements on resellers which are, for all practical purposes, unattainable;⁷ create other restrictions that apply only to resellers; and inflate wholesale prices in order to subsidize losses at the retail level.⁸ The Second Notice similarly recognizes that, overall, "CMRS providers may have incentives to refuse to enter into resale arrangements with competing carriers."⁹

⁵ See Resale and Shared Use, 60 F.C.C.2d at 282-85, 321.

⁶ See Continental Mobile Telephone Company, Inc. v. Chicago SMSA, L.P., 9 FCC Rcd 1583 (1994).

⁷ See Petition of Arizona Corporation Commission to Extend State Authority Over Rate and Entry Regulation of All Commercial Mobile Radio Services, Report and Order and Order on Reconsideration, PR Docket No. 94-104, FCC 95-190, at ¶¶ 44 & 49 (released May 19, 1995).

⁸ See Changes to the Commission's Cellular Resale Policies, 6 FCC Rcd 1719, 1722-23 (1991) [hereinafter "Cellular Resale Policies"].

⁹ See Second Notice, ¶ 86; see also Comments of Telecommunications Resellers Association, CC Docket No. 94-54, at iv (filed June 14, 1995) ("Cellular carriers have already demonstrated an inclination . . . to shirk their resale and related obligations until

Monitoring such conduct is likely to be all the more difficult now that CMRS services have been detariffed. In order to discourage these practices, the Commission should put all facilities-based providers on notice that its resale policies are not to be circumvented. More specifically, the Commission should make clear that volume discounts must be available to all users on the same terms and conditions; that it is an unjust and unreasonable practice to require minimum traffic commitments from resellers which are not required of similarly situated customers; that practices favoring the carrier's own facilities-based services at the expense of resellers violate the Communications Act; and that the Section 208 complaint process is available to adjudicate violations of these resale policies.¹⁰ Given resellers' inherently limited negotiating leverage, there will be a continuing need for the Commission to ensure that resale opportunities are not unreasonably restricted.

III. THE COMMISSION SHOULD REQUIRE FACILITIES-BASED CMRS PROVIDERS TO PERMIT THE RESALE OF THEIR SERVICES BY SWITCH-BASED RESELLERS AND BY COMPETING FACILITIES-BASED CARRIERS.

The Second Notice tentatively concludes that facilities-based CMRS providers should not be required to accommodate switch-based resellers. This tentative conclusion is premised on the assumption that the benefits of such a requirement do not appear to outweigh the costs.¹¹ The facilities-based CMRS providers which have filed in support of this position also argue that the CMRS market is sufficiently competitive to negate the need for switch-based

¹⁰ See Cellular Resale Policies, 6 FCC Rcd at 1724 (issuing similar cautions).

¹¹ Second Notice, ¶ 96.

resale, and that such a requirement would, from a technological standpoint, be unduly burdensome.¹²

Switch-based resale, however, is essential if the Commission is to be successful in achieving its goal of increasing competition in the CMRS marketplace. At this point in the development of CMRS, the Commission's policies should maximize the number of efficient operators in any given market, without regard to whether they are facilities-based carriers, "pure resellers," or switch-based resellers. The Commission also should ensure that resellers are in a position to keep pace with, and to offer different or more sophisticated services than, facilities-based providers.

The ability of a reseller to interconnect its switch with a CMRS provider's network is absolutely essential for this purpose, because that is where the capability to support advanced CMRS services resides. Among other things, a switch enables a resale operator to obtain real-time information about its customer traffic. With that information, an operator can monitor for fraud in real-time, bill in near real-time, and develop other real-time customer applications and enhanced services.¹³ Without a switch, a reseller is dependent on the underlying carrier's practices and technology, and only has access to those switch-based services that the underlying carrier chooses to offer. Moreover, the switched-based services of underlying carriers are of little benefit to resellers. Generally speaking, facilities-based carriers

¹² See, e.g., Comments of Sprint Telecommunications Venture, CC Docket No. 94-54, at 11-12 (filed June 14, 1995); Comments of Rural Cellular Coalition, CC Docket No. 94-54, at 8-9 (filed June 14, 1995).

¹³ Accord Comments of National Wireless Resellers Association, CC Docket No. 94-54, at 7 (filed June 14, 1995).

do not offer wholesale, or bulk, rates for switched-based functions. A reseller can offer these services, but to remain competitive it has to simply pass through the retail charges to the end user. Consequently, the reseller cannot offer these services in true competition with the underlying carrier.¹⁴

To further stimulate CMRS competition from resellers, the Commission should require facilities-based CMRS providers to make their services available for resale by other facilities-based carriers,¹⁵ as WorldCom, Inc. and the Information Technology Association of America have suggested.¹⁶ If a facilities-based carrier chooses not to deploy new facilities in a given region, but to resell a competitor's service instead, that carrier simply is demonstrating that the region already has sufficient capacity.¹⁷ Competition will be maximized when additional demand develops in the region and competing carriers vie to create capacity to meet that demand. Resale by facilities-based carriers will not reduce their incentives to build out facilities, as the Commission appears to fear.¹⁸ The Commission's build-out requirements for

¹⁴ Switch-based resale will eliminate another particularly unfair and unreasonable practice which resellers encounter. Although facilities-based cellular carriers generally do not permit switch-based resale, they often impose on resellers the risk of fraud associated with the resellers' accounts. This forces resellers to bear the costs of fraud without being given the means to prevent it.

¹⁵ See Second Notice, ¶ 70.

¹⁶ See Comments of WorldCom, Inc. (d/b/a LDDS WorldCom), CC Docket No. 94-54, at 1-3 (filed June 14, 1995); Comments of Information Technology Association of America, CC Docket No. 94-54, at 6-7 (filed June 14, 1995).

¹⁷ See Second Notice, ¶ 70.

¹⁸ See id., ¶ 89.

CMRS systems already address that concern.¹⁹ Once licensees have satisfied the Commission's minimum construction requirements, market forces, including the demand for services resold by facilities-based carriers, should determine when and where new facilities are built.

IV. THE COMMISSION SHOULD REQUIRE CMRS NUMBER PORTABILITY.

To further enhance the viability of CMRS resale, the Commission should make number portability an integral part of its resale policy.²⁰ At its recent open meeting of July 13, 1995, the Commission adopted a Notice of Proposed Rulemaking to explore local telephone number portability. Although the full text of that Notice is not yet available, the Commission's press release notes that "[n]umber portability promotes competition between service providers by allowing consumers to respond more readily to service and price differences among competing providers."²¹

Clearly, number portability will be a boon to CMRS competition. As the Commission found in mandating 800 number portability, many users overcome their reluctance to search for better service and lower prices once they recognize they can retain their existing telephone numbers. In the months following the introduction of 800 number portability, competition in the provision of, and the demand for, 800 services have increased sharply.

¹⁹ See, e.g., 47 C.F.R. §§ 24.203, 90.167 (imposing license cancellation penalties on licensees that fail to meet build-out requirements).

²⁰ See Second Notice, ¶ 94.

²¹ "Commission Seeks Comment on Telephone Number Portability," FCC News Report No. DC 95-99 (July 13, 1995).

Consumers are benefiting from lower prices just as the Commission had hoped. There is no reason to believe that CMRS number portability will produce any other result.

The only substantive opposition to number portability appears to be technologically based.²² Yet, local number portability tests already are underway in New York and the District of Columbia.²³ Such advancements in technology suggest that number portability is not as problematic as claimed. If the Commission provides the industry with sufficient lead time, the industry can transition to number portability with minimal burden to CMRS providers.

V. THE COMMISSION SHOULD REQUIRE CMRS PROVIDERS TO MAKE ROAMING ARRANGEMENTS AVAILABLE TO RESELLERS.

In the Second Notice, the Commission observed that there are many potential technical obstacles to requiring roaming arrangements among CMRS providers. Accordingly, the Commission indicated that "technical issues should receive intense study . . . prior to the imposition of regulatory requirements."²⁴ Several facilities-based CMRS providers also have suggested that market forces are sufficient to engender roaming agreements.²⁵

²² See Comments of Southwestern Bell Mobile Systems, CC Docket No. 94-54, at 20-22 (filed June 14, 1995) [hereinafter "SBMS Comments"].

²³ See Common Carrier Issues Dominate Agenda, Communications Daily, July 10, 1995, at 1, 2.

²⁴ Second Notice, ¶ 54.

²⁵ See, e.g., Airtouch Comments at 11-12; SBMS Comments at 13-14.

The comments of other facilities-based carriers, however, indicate that the Commission can foster roaming in the absence of "intense" technical study.²⁶ CWI agrees with these parties. As the Second Notice correctly recognizes, roaming is "critically important to the development of the 'networks of networks.'"²⁷ Roaming offers users the ability to transmit and receive communications at any time and any place. Roaming is particularly important given the likely concentration of CMRS facilities among a limited number of carriers.

Unfortunately, not all roaming agreements are available to CMRS resellers. As a consequence, many of these resellers will be confined to smaller coverage areas than their facilities-based competitors, and thus be at a competitive disadvantage. As less effective competitors, these resellers will exert less downward pressure on rates. The Commission should avoid this result by requiring CMRS providers to extend all roaming arrangements to resellers.

VI. THE COMMISSION SHOULD PROMOTE INTERCONNECTION AMONG CMRS NETWORKS AT THE EARLIEST POSSIBLE DATE.

The Commission has noted that interconnection among CMRS networks is a "further step toward a ubiquitous 'network of networks'" that will promote efficiency, reasonable prices, and broad access to services.²⁸ In addition, the Commission has recognized that CMRS providers are obligated by their common carrier status to offer services, including interconnection services, on a nondiscriminatory basis. The Commission has nonetheless

²⁶ See Comments of American Personal Communications, CC Docket No. 94-54, at 7-8 (filed June 14, 1995); Comments of Pacific Telesis/Pacific Bell Mobile Services, CC Docket No. 94-54, at 3-6 (filed June 14, 1995).

²⁷ Second Notice, ¶ 54.

²⁸ Id., ¶ 28.

tentatively concluded that it would be premature to require interconnection among CMRS networks (in large part because PCS and wide-area SMR networks are still in their developmental stages). The Commission, however, also has indicated that it will closely monitor the evolution of interconnection arrangements.²⁹

Such monitoring is essential. Indeed, the Commission should commit itself to reexamining the question of mandatory interconnection if the desired "network of networks" does not evolve at an early date. The Second Notice suggests that "there may be a dramatic increase in the number of calls completed between CMRS systems, making more extensive direct connections between CMRS providers beneficial from both a cost and service standpoint."³⁰ CWI submits that this understates the case. As the Commission has already recognized in its PCS proceedings, the demand for wireless communications is potentially extraordinary. The very essence of the PCS proceedings has been an effort to tap the latent market for person-to-person, as opposed to location-to-location, communications. Such communications necessarily will require extensive CMRS-to-CMRS interconnection arrangements, and the Commission should ensure that such arrangements develop as expeditiously, and extend as broadly, as possible.³¹

²⁹ Id., ¶ 29.

³⁰ Id., ¶ 30.

³¹ The Commission also should monitor the evolution of "mediated access" and its potential applicability to CMRS. As proposed, mediated access will allow resellers and other third parties to gain access to the landline local exchange carriers' intelligent network capabilities. See Intelligent Networks, 8 FCC Rcd 6813, 6813 (1993); see also "Pleading Cycle Established for Recent Filings in Intelligent Networks Proceeding," Public Notice No. DA 95-1456 (corrected version released June 30, 1995) (requesting comment on multi-party proposal for tests and field trials, and on separate claim that Commission need not require mediated access). To the extent facilities-based CMRS providers

Direct and pervasive interconnection is especially important for the development of an effective resale market. At present, essentially all CMRS-to-CMRS communications must be routed through the bottleneck facilities of local exchange carriers ("LECs"). Although many LECs are affiliated with CMRS (i.e., cellular) providers, the LECs have little incentive to reduce costs for their affiliated providers, since doing so also would reduce costs for their affiliates' competitors. In fact, to the extent a LEC's CMRS affiliate is better capitalized than its competitors, a LEC will have an incentive to serve CMRS providers inefficiently. Direct CMRS-to-CMRS interconnection will create competition in this otherwise noncompetitive market.

Such reduced interconnection costs will lead to reduced rates for consumers. This, in turn, will enhance the demand for CMRS service, creating a larger overall market for these services. Direct interconnection also will lower barriers to entry for resellers, and it will foster the development of niche markets for which resellers are particularly well-suited. Niche data services, the success of which is greatly dependent upon accuracy and speed, will particularly benefit from the improved efficiency of direct CMRS-to-CMRS interconnection.

In their comments, several facilities-based carriers have suggested that interconnection should not be mandated because CMRS operators do not have market power, and because competing carriers always can interconnect through the LECs' landline networks.³²

develop their own intelligent network capabilities, those capabilities should be made available to resellers and others.

³² See, e.g., Comments of Rural Cellular Association, CC Docket No. 94-54, at 3-4 (filed June 14, 1995); Comments of American Mobile Telecommunications Association, CC Docket No. 94-54, at 2-4 (filed June 14, 1995).

These arguments, however, ignore the benefits of pervasive connectivity among all facilities-based CMRS providers.

These arguments also ignore the disadvantages of leaving interconnection decisions entirely to the market. In the Second Notice, the Commission has correctly recognized that lack of market power and the availability of LEC interconnection will not necessarily ensure that interconnection is available on reasonable and nondiscriminatory terms. A single large CMRS provider may have an incentive to keep its smaller rivals' costs high by denying direct interconnection, regardless of the large operator's lack of market power or the availability of alternate routing through the LEC network.³³ Unmentioned, but worse, is the possibility that two or more large providers -- through collusion or otherwise -- could keep small rivals' costs high by delaying or denying direct interconnection. Any such anticompetitive conduct in the CMRS market, i.e., a market seemingly predestined for consolidation, would disserve the public interest. The Commission should therefore remain vigilant in ensuring that direct interconnection, available to all, develops promptly.

³³ Second Notice, ¶ 32.

VII. CONCLUSION

For all of the foregoing reasons, CWI urges the Commission: to require the resale of CMRS capacity on reasonable terms and conditions; to require resale both to switch-based resellers and to competing facilities-based carriers; to require number portability; to require that roaming arrangements be made available to resellers; and to monitor closely the development of CMRS networks so that interconnection among them can be achieved as early as possible.

Respectfully submitted,

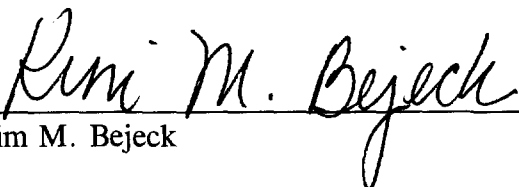
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July 14, 1995

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I, Kim M. Bejeck, do hereby certify that on this 14th day of July, 1995, I have caused a copy of the foregoing to be served via first class United States Mail, postage pre-paid, upon the persons listed on the attached service list.



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